Supreme Court, U. S.
FILED
AUG 27 1975
MICHAEL RODAK, JR., CLERK

No. 75-303

In the Supreme Court of the United States

OCTOBER TERM, 1975

IN THE MATTER OF

SAMUEL V. BOSSOV,

Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Petitioner, Samuel V. Bossov, prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Illinois which suspended him from the practice of law for three (3) years.

OPINION BELOW

The judgment of the Supreme Court of Illinois, two justices dissenting, was entered March 24, 1975. The unreported opinion is reprinted at Appendix A. Petition for Rehearing was denied May 29, 1975. A copy of the order denying rehearing is reprinted at Appendix B.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

1. Whether the suspension of an attorney in a state court disciplinary proceeding on stale charges, based on events of 14 to 17 years ago, is commensurate with the "due process," "speedy trial" and "cruel and unusual punishment" provisions of the United States Constitution as applied to the states through the Fourteenth Amendment.

2. Whether the state court violated the constitutional standard of due process when it shifted the burden of proof on essential elements of the charges against the Petitioner.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment VI:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

United States Constitution, Amendment VIII:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

United States Constitution, Amendment XIV, Section 1:

> "All persons born or naturalized in the United States are subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This was a disciplinary proceeding instituted on February 5, 1965, against a duly licensed attorney at law, Samuel V. Bossov.

A 16 count complaint was lodged against Mr. Bossov (the instant Petitioner) by the Board of Managers of The Chicago Bar Association, sitting as commissioners of the Supreme Court of Illinois. The complaint alleged that between May, 1957 and February, 1961, Petitioner had unlawfully solicited and procured personal injury cases and failed to account to clients for monies received on their behalf.

The charges against Petitioner were the outgrowth of an investigation by the American Insurance Association, whose employees and agents posed as representatives of The Chicago Bar Association. As the dissenting opinion below notes, the investigation lasted several months and witnesses were "ferreted out" by a "multitude of insurance investigators." None of Petitioner's clients were

among the "complainants" in the 16 charges filed against him.[1]

Of the original 16 count complaint, seven entire counts were abandoned. Solicitation charges in five of the nine remaining counts were retained; "failure properly to account" was charged in 14 of the original 16 counts of which five were retained; and the charge of "failure to consult with clients on settlements" was retained in three counts. In the counts which survived dismissal, unprofessional conduct was charged in eight accident cases—the most recent of which occurred on February 10, 1961, and the oldest of which happened on July 12, 1958.

The Bar Association's complaint was served upon the attorney on February 5, 1965—four years after the most recent accident, four years and eight months after the most recent allegation of failure to account, and three

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[1] In 1965 the standard procedure in initiating and conducting an investigation of an attorney for disciplinary purposes was by an inquiry or grievance committee of The Chicago Bar Association, or the Illinois State Bar Association. If the evidence heard by these committees warranted discipline, a formal complaint was made against the attorney, hearings thereon were held by the Bar Association committees involved and recommendations made by the governing officials of the Bar Association to the Supreme Court of Illinois for appropriate discipline. In 1973 this procedure was changed by a rule of the Supreme Court establishing the Attorney Registration and Disciplinary Commission, a full-time body with subpoena power, to conduct its own investigations of complaints against attorneys and to recommend appropriate discipline to the Supreme Court. Ill.Rev.Stat. ch. 110A, §§ 751-756 (1973); see, Murphy, *Disciplinary Procedures*, 60 Ill. Bar J. 528 (1972). The instant procedure of commencing and processing a complaint against Petitioner by agents and employees of a self-interested body such as the American Insurance Association was most unusual.

years and five months after the Insurance Association investigation was completed. Proofs were closed November 12, 1970.

Without explanation, the hearing panel of the Chicago Bar Association delayed for over two years and seven months before issuing a report on June 14, 1973, recommending disbarment of Petitioner. This recommendation was not adopted and on January 7, 1974, the Board of Managers filed a report with the Illinois Supreme Court recommending suspension for three years. Four justices of the Supreme Court of Illinois accepted the sanction recommended by the Board of Managers and entered judgment accordingly. Two justices dissented on the ground, in part, that the punishment was excessive in the circumstances.

In the interval between February 10, 1961, the date of the last alleged misconduct of the Petitioner, to the present, no fresh charges were made against him and he continued to practice law in a responsible and proper professional manner.

Petitioner specifically raised the constitutional issues underlying this Petition for Writ of Certiorari before the Illinois Supreme Court. Petitioner asserted that unreasonable delays in the disciplinary proceedings violated his constitutional right to due process of law. (Brief of Respondent at 6-7, 47-57; Petition for Rehearing, 13-15, 18-25).

The Illinois Supreme Court "deplored" these delays and commented there was "no explanation" for the delay of over two years between the completion of hearings and the filing of the report. Nevertheless the majority held

that ". . . on this record they do not constitute a sufficient ground for the dismissal of the complaint." (App. A at 8).

Despite Petitioner's allegations of specific prejudice caused by delay and the demonstrated inability of witnesses to remember the events, the court found that there was "no charge of specific prejudice made" and that the record indicated "no prejudice" resulted from the delays. (App. A at 9).

Likewise, the majority rejected Petitioner's assertion that the charges had not been established by clear and convincing evidence on a record free from doubt. (App. A. at 2).

REASONS FOR GRANTING WRIT

It is respectfully submitted that the instant record presents serious constitutional violations worthy of this Court's review as follows:

(1) The long delay in filing charges and the additional delay in imposing sanctions violated Petitioner's right to due process.

(2) The punishment was "cruel and unusual."

(3) The court below failed to meet due process standards of proof in determining Petitioner's guilt.

I.

PETITIONER'S CONSTITUTIONAL RIGHT TO DUE PROCESS WAS ABRIDGED BY THE INSTANT DISCIPLINARY PROCEEDING.

A disciplinary proceeding against an attorney is quasi-criminal in nature and the basic constitutional requirements of due process apply. *In re Ruffalo,* 390 U.S. 544, 551 (1968); *Spevack* v. *Klein,* 385 U.S. 511 (1967).

A. The Delays In Processing Stale Charges Were Prejudicial And Unjust To Petitioner.

The delays of the Chicago Bar Association in initiating the action and in rendering its report and recommendation of punishment are without explanation or justification. Although Illinois law specifies no statute of limitations for disciplinary proceedings, most jurisdictions consider lengthy delays as cause for dismissal of charges. See *Tennessee Bar Association* v. *Berke,* 344 S.W.2d 567 (C.A. Tenn. 1960); *Florida Bar Association* v. *Randolph,* 238 So.2d 635, 639 (Fla. 1970). It is also the law of Illinois.

People v. *Allison*, 68 Ill. 151 (1873); *People* v. *Hooper*, 218 Ill. 313, 75 N.E. 896 (1905).

In the *Tennessee* case, the court remarked in language pertinent to the instant case:

> "The gravity of the charges demanded that they be examined fully at the first opportunity. That this was not done does not appear to be the fault of Berke. . . . Moreover, it appears that in the nine-year period, Berke has not transgressed against the ethics or morals of the legal profession, but to the contrary, sustained a good reputation as a lawyer." 344 S.W.2d at 572.

In the *Florida* case the court remarked:

> "The responsibility for exercising diligence in the prosecution rests with the Bar. When it fails in this regard, the penalizing incidents which the accused lawyer suffers from unjust delays, might well supplant more formal judgments as a form of discipline. This is so, even though the record shows that the conduct of the lawyer merits discipline." 238 So.2d at 639.

The majority of the Illinois Supreme Court unrealistically and inaccurately suggests that no prejudice was shown as a result of the delay in the proceedings against Petitioner. (App. A at 9). The record, however, is replete with instances where Petitioner was prejudiced in his defense by the confused and uncertain testimony of witnesses who freely admitted to greatly diminished powers of recollection. The Bar Association's unreasonable delay in filing charges after completion of a full investigation was in large part responsible for the losses of recollection.

Petitioner was particularly prejudiced by this delay in defending allegations that he solicited personal injury claims. In four instances, the witnesses testified that un-

identified persons recommended Petitioner as their attorney. But the complaint against Petitioner alleged that he ". . . retained and employed various persons to solicit and/or procure, *for consideration,* personal injury claims." (Emphasis added). The witnesses were unable to identify any so-called procurers.[2] Where a principal party to the event in question cannot be located because of delay, the defense has been substantially prejudiced. *United States* v. *Curry,* 284 F.Supp. 458 (N.D. Ill. 1968). These understandable losses of memory, caused by delays from five to nine years between the alleged event and the time of testimony, prejudiced the Petitioner in refuting the allegations against him. For example, Petitioner was unable to establish by independent testimony the negative fact, consistent with his own testimony, that he never paid anyone to solicit personal injury claims.

One witness described the effect of the delays on his ability to testify as follows:

> "After seven years I couldn't tell you much of anything." (R. 1163).

The Illinois Supreme Court conceded that most of the evidence concerning solicitation was circumstantial. (App. A at 4). The only evidence of solicitation that was not circumstantial involved a lady of advanced years who testified nine years after the event that Petitioner personally solicited her son's injury claim. In the interim, she had suffered a stroke and admitted that her mind was "not as great as it was." (R. 1065). Her physical description

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[2] One witness, testifying 7 years after the event, claimed that one of Petitioner's lawyers in this case and an investigator solicited his case in Chicago in 1960. It was stipulated that the lawyer was then a student in Cambridge, Massachusetts, and the investigator testified he first met the witness in 1965 in the course of preparing for Petitioner's disciplinary hearing.

of Petitioner was completely inaccurate (R. 1110) and she testified that the man who approached her on a Saturday in the summer of 1958 wore a hat. (R. 1067). Petitioner's habit was to play golf every summer weekend and never (except on one occasion when he lost a bet) to wear a hat. (R. 1969-70).

Contrary to the majority's assertion that "[t]here is no prejudice to the respondent shown by the record [of delay] here . . ." (App. A at 9), the record clearly shows prejudice in that Petitioner was unable to examine the alleged "procurers" in order to refute the inference that four isolated recommendations of his services ". . . show[ed] a pattern of comprehensive solicitation and procurement . . . ." (App. A at 2). Procedural due process required nothing less than prompt and fair notice of the charges in this disbarment proceeding. See, *In re Ruffalo,* 390 U.S. 544, 551, n.4 (1968).

B. The Sanction Imposed On The Petitioner Is "Cruel And Unusual" In The Circumstances Of The Instant Record.

A punishment which is "greatly disproportionate to the offense charged" is repugnant to the Eighth Amendment, *Weems* v. *United States,* 217 U.S. 349, 371, 382 (1910), the substance of which is now firmly embodied in the Fourteenth Amendment. *Robinson* v. *California,* 370 U.S. 660 (1962).

The discipline of an attorney whether by disbarment or prolonged suspension ". . . is the destruction [of the attorney's] professional life, his character and his livelihood. A removal of an attorney from practice for a period of years entails the complete loss of clientele with its consequent uphill road of patient waiting once again to estab-

lish himself in the eyes of the public, and the good graces of the courts and his fellow lawyers. In the meantime, his income and livelihood have ceased to exist." *In re Donaghy,* 402 Ill. 120, 83 N.E.2d 560, 562 (1948). While a punishment as severe as a three-year suspension may have been suitable at the time of the infractions, the intervening fourteen-year period has seen the marriage of the Petitioner, the raising of three children, and the conduct of a respectable law practice, unmarred by even a suggestion of impropriety.

Moreover, this Court has recognized that inordinate delay—

> "May 'seriously interfere with defendant's liberty, whether he is free on bail or not, and . . . may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends.' " *Moore* v. *Arizona,* 414 U.S. 25, 27 (1973).

In light of the punishment that Petitioner has been suffering for the last decade and his exemplary record for the last fourteen years, a three-year suspension is indeed "greatly disproportionate to the offense(s) charged."

As this Court has said:

> "To be sure, imprisonment for ninety days is not, in the abstract, a punishment which is either cruel or unusual. But the question cannot be considered in the abstract. Even one day in prison would be a cruel and unusual punishment for the 'crime' of having a common cold." *Robinson* v. *California,* 370 U.S. 660, 667 (1962).

The dissenting opinion of the Illinois Supreme Court is absolutely correct in asserting that, even accepting the majority's view of the evidence, the punishment of three years' suspension is harsh and excessive.

II.

PETITIONER'S RIGHT TO DUE PROCESS OF LAW WAS VIOLATED BY THE FAILURE OF THE ILLINOIS SUPREME COURT TO APPLY THE REQUIRED STANDARD OF PROOF.

Due process at the bare minimum requires that an accused can only be found guilty of the charges set out in the complaint. The Petitioner was charged, in part, with soliciting clients through paid agents. A failure to allege that the agents were hired by Petitioner would have been fatally defective under settled Illinois law. *In re Donaghy*, 402 Ill. 120, 83 N.E.2d 560 (1948).

The only evidence offered to support this charge consisted of testimony by former clients that certain unidentified individuals had recommended Petitioner as a lawyer. There was no evidence to support the essential allegation that the solicitors were paid for their efforts. The Illinois Court, however, held that such payments would be presumed from the evidence that unidentified individuals had recommended Petitioner. The court stressed that the Petitioner had failed to prove the absence of payment.[3]

Petitioner was thus charged with misconduct consisting of two elements—solicitation and payment. After the evidence had been gathered and the hearings closed, however, he was informed that the Complainant need only show

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[3] In its decision the Illinois Supreme Court stated:
"We consider the evidence of solicitation satisfied the requirement that it be clear and convincing. The respondent's argument that there was no evidence that the respondent had employed anyone to solicit injury claims for him or that he had paid anyone to do so does not persuade. We consider that the evidence of solicitation, though mostly circumstantial, was convincing." (App. A at 3-4).

solicitation. Petitioner must then disprove the second element, even though no evidence of its existence had been introduced and despite the fact that the alleged solicitors were never identified.

Such changes in the rules in the late stages of a disciplinary proceeding offend due process by denying Petitioner fair notice of the burden being imposed upon him. In *In re Ruffalo,* 390 U.S. 544 (1968), an attorney was charged with hiring a specified individual to solicit clients. In the middle of the hearings, the attorney's evidence demonstrated that this individual was hired as an investigator and not a solicitor. The charges were then amended to allege that the investigator was hired to investigate his own employer. This Court held that such procedure violated the attorney's due process rights. The fact that the attorney was given an opportunity to present evidence on the amended charges did not cure the constitutional defect since the attorney's actions during the earlier stage of the hearings were prejudiced by the amendment. The present case presents similar, although more egregious, constitutional violations. The charges against Petitioner were effectively amended to dispense with the allegation of payment only after the hearings had been completed. Unlike the attorney in *Ruffalo,* Petitioner had no opportunity to present further evidence when he discovered that the burden of proving the absence of payment had been placed upon him.

As noted above, Illinois law requires proof of attorney misconduct by clear and convincing evidence on a record free from doubt. *In re Moore,* 8 Ill.2d 373, 134 N.E.2d 324, 327 (1956). The Illinois court failed to apply this standard and shifted the burden of proof on an essential element of the charges. Relaxation of the customary standard of proof in such proceedings violates the due process clause.

In re Winship, 397 U.S. 358 (1970). See also, *Mullaney* v. *Wilbur*, 95 S.Ct. 1881 (1975); *Cool* v. *United States*, 409 U.S. 100 (1972).[4]

CONCLUSION

For these reasons Petitioner prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of Illinois.

Respectfully submitted,

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[4] Disciplinary actions against attornies are for due process purposes, equivalent to juvenile proceedings. See *In re Ruffalo*, 390 U.S. 544, 551 (1968). This Court held in *Winship* that a shift in the standards of proof in juvenile proceedings violates due process requirements.

APPENDIX

APPENDIX A

Docket No. 46403—Agenda 59—September, 1974.

In re SAMUEL V. BOSSOV, an Attorney, Respondent

MR. JUSTICE WARD delivered the opinion of the court:

A division of the Committee on Grievances of the Chicago Bar Association sitting as commissioners of this court under our former Rule 751 recommended that Samuel V. Bossov, the respondent, be discharged from the practice of law. The complaint against the respondent, which had been filed by the Committee on Inquiry of the Chicago Bar Association, had charged him with soliciting personal injury claims, failing to account properly and pay over amounts due clients on settlements reached and with settling cases without having consulted with the clients. When the proceeding was referred to the full Committee on Grievances, that committee recommended that the sanction against the respondent be changed to suspension from practice for a period of five years. The Board of Managers of the Association then considered the record in the proceeding and has recommended to this court that the respondent be suspended for three years.

Bossov contends before us that the findings in the disciplinary proceeding were not sufficiently proved; that the participation of agents of the American Insurance Association in the investigation requires that the complaint against him be dismissed; and also that because of the unreasonable delay in the proceeding the complaint should be dismissed.

In a disciplinary proceeding the charges must be proved by clear and convincing evidence (*In re Moore*, 8 Ill.2d 373, 379) and findings made in the proceeding are entitled

to virtually the same weight as the findings of any initial trier of facts in our judicial system (*In re Broverman,* 40 Ill.2d 302, 306). The credibility of witnesses is a question for the commissioners who hear and observe the witnesses. *In re Lingle,* 27 Ill.2d 459, 467.

We cannot accept the contention that the findings of improper conduct made in the disciplinary proceedings were not supported by clear and convincing evidence.

As to the charges that the respondent solicited personal injury claims, the Committee on Grievances stated that "the charges of solicitation and procurement in Counts IV, VII, VIII, IX and X and the evidence produced in connection therewith show a pattern of comprehensive solicitation and procurement of personal injury claims by and on behalf of respondent."

The evidence to support the charges in count IV showed the client had been released from the hospital at about 5:00 or 5:30 p.m. following an accident which had occurred between 3 and 4 o'clock in the afternoon. That evening someone phoned the client's home and later a man came to her house and left the respondent's professional card. Regarding count VII, the client testified that the respondent approached her and her son when they were leaving the hospital and asked if he could represent them in their claims. She had never heard of respondent. That evening the respondent and another man appeared at her home and asked to represent her and her son in their claims.

The client concerned in count VIII of the complaint testified that following an automobile accident in which he was involved the investigating police officer suggested that he would be able to get a "newer car" if he employed the respondent. That evening, the client testified, representa-

tives of the respondent called on him and left the respondent's card. He also testified that the respondent referred him to a physician and advised him to tell the physician that he had been injured.

The client referred to in count IX testified that in the evening following an accident in which he was involved an unknown man came to him and recommended the respondent as an attorney. He gave the respondent's professional card to the client, who had never heard of the attorney. When he spoke with the respondent he told him "I feel all right," but the respondent told him, he testified, to go to see the same physician named in the evidence supporting the charge in count VIII and suggested that the client stay away from work to improve his case.

The client concerned in count X testified that a man came to his house the day after an accident in which the client was involved and recommended the respondent's services. He gave the client the respondent's card and had him sign a retainer agreement. When the client visited the respondent at his office, the agreement he had signed was on the respondent's desk.

Prior to their accidents the clients in counts IV, VII, VIII, IX and X did not know the respondent and had never heard of him.

In his testimony at the disciplinary proceedings the respondent stated he did not remember how the clients concerned in these counts came to him and his files did not indicate the circumstances of his being retained by them.

We consider the evidence of solicitation satisfied the requirement that it be clear and convincing. The respondent's argument that there was no evidence that the re-

spondent had employed anyone to solicit injury claims for him or that he had paid anyone to do so does not persuade. We consider that the evidence of solicitation, though mostly circumstantial, was convincing. What we said in *In re Krasner,* 32 Ill.2d 121, 127, under resembling circumstances, is applicable here:

> "Anchoring his argument to the frequently expressed principle that charges in a disciplinary proceeding must be sustained by clear and convincing proof, (*e.g. In re Donaghy,* 402 Ill. 120, 124) respondent contends there is no proof that Vogele, Skidmore or any other person actually solicited any cases, or that respondent had any knowledge they were doing so, and as a consequence no evidence that business was ever solicited by respondent or by others in his behalf. His theory seems to be that without direct testimonial evidence of solicitation, either by Vogele or Skidmore or the persons solicited, the proof against him is neither clear nor convincing. We do not agree. Circumstantial evidence is legal evidence and neither the commissioners nor this court are required to be naive or impractical in appraising an attorney's conduct."

As to the charges that Bossov failed to account for and pay over amounts due clients in the settlements, the Committee stated that the charges in counts I, II, III, IV and VII showed a pattern of the respondent's settling claims without proper explanation or accounting to his clients. It was stated, too, there were irregularities in the accountings by the respondent and that in one instance a client was induced to file a false statement to conceal that the client had been shortchanged in a settlement distribution.

In count I there were two clients concerned, Lancaster and Robinson. Two settlements were involved, one for $3,000 and one for $1,000. An insurance company draft

was made payable to Lancaster, Robinson and the respondent for $3,000, and a draft by a different insurance company in the amount of $1,000 was made payable to Lancaster, his wife and the respondent. The fee arrangement between Bossov and the clients was that he would be entitled to one third of any settlement as attorney's fees. Robinson received only $300 from the settlement and Lancaster received payments of $50, $35, $400, $200 and $400 from the respondent as his share of the settlements. The respondent had told Lancaster that the first settlement was for $1,000 when in fact it was for $3,000. The $200 and the second payment of $400 that Lancaster received from the respondent were gotten after Lancaster received a letter from the insurance company stating that the settlement had been for $3,000. Lancaster went with his former employer to the respondent's office and confronted him with the letter. The respondent gave Lancaster $200 in cash and told him not to return. However, the respondent later paid Lancaster an additional $400. Bossov testified that he did not know and did not have any record of what he had paid Lancaster.

The case of the client involved in count II was settled for $350. The respondent sent the client a check for $100, although the client had never authorized the settlement and had never signed a release or authorized its being signed. The respondent had filed his attorney's lien notice for 33⅓ percent with the insurance company, and the client, of course, was entitled to two thirds of the settlement. The respondent's statement in his defense that the client wanted only $100 and that he was agreeable to the attorney's retaining all in excess of that amount is irrelevant and professionally offensive.

The testimony of the client concerned in count III was that he received $300 in cash from the respondent and also small advances not in excess of a total of $20. He never received an accounting from the respondent. The settlement involved was $950. Respondent denied that he had given the client $300 in cash and exhibited his check made payable to the client in the amount of $587. The respondent testified that he cashed the check for the client but he didn't recall how much money was given the client.

In count IV there was a settlement of $2,400 for a woman and a $300 settlement for her minor daughter. The client testified that neither she, her daughter nor her husband had seen the insurance company's settlement draft and that she had not received any accounting from the respondent. She said she had endorsed a check which the respondent had made payable to her order but that she had not seen the face of the check. The check was for $1,700. The respondent gave her nine $100 bills after she had endorsed it. She testified that after an investigation had begun into the settlement of her case two men who identified themselves as representatives of the respondent came to her home in February or March, 1963, and after telling her there had been an error gave her five $100 bills. She wrote out and backdated a statement at the dictation of one of the men. The statement was to the effect that she had received her settlement in full from the respondent and she was told to date the statement "September 14, 1961." The respondent acknowledged that he had paid the client the additional $500, saying that he hadn't paid it earlier because he did not have the cash. He also said the client had not requested the money and he had assumed her case had been closed.

The *amicus curiae* has stated before this court that the client referred to in count VII of the complaint did in fact receive a satisfactory accounting from the respondent.

We judge that the failure of the respondent to account promptly and pay over moneys due clients was sufficiently demonstrated. Such a failure was obviously and grievously improper and of course constitutes serious misconduct. *In re Snitoff*, 53 Ill.2d 50.

We must reject the contention that activities of employees of the American Insurance Association require that the complaint must be dismissed. The respondent's contention was that the investigation and the complaint's preparation were not conducted by the Chicago Bar Association. He said the investigators were not members of the Chicago Bar Association and were at all times subject to the direction of the insurance association. However, John Burns, who testified that he and other investigators of the American Insurance Association had been checking on professional activities of the respondent, said that he had acted as an agent of the Chicago Bar Association and that he and the other investigators had acted at the request of the bar association. They turned over the results of their investigations to that association. In the course of the investigation, and preceding and following it, he had received directions and instructions from representatives of the bar association. He testified that he did not play any part in the drafting or the filing of the complaint against the respondent and said he in no way participated in the prosecution, save as a witness. It appears from the record that the complaint was drawn by members of the Inquiry Committee of the Chicago Bar Association and that the prosecution was conducted only by committee members.

A respondent in *In re Ashbach,* 13 Ill.2d 411, made a similar argument concerning an investigation which he said had been conducted by an insurance association. This court in rejecting the argument said in part: "But regardless of the source of the evidence, it is our duty to decide the case on its merits." 13 Ill.2d 411, 417-8.

The delays of which the respondent complains are to be deplored, but on this record they do not constitute a sufficient ground for the dismissal of the complaint.

John Burns, the insurance association investigator, testified that he and two other investigators concluded their inquiries in this matter in the fall of 1961, but he did not know when the entire investigation was completed. The complaint was filed on January 29, 1965, and was served on the respondent in February 1965. The hearings were not completed until March 4, 1971. The hearing division, or Division Three of the Committee on Grievances, filed its findings on June 14, 1973. The full Committee on Grievances, after amending the findings and recommendation of Division Three, referred the proceeding to the Board of Managers of the Chicago Bar Association. After considering objections of the respondent and amending findings and recommendations the Board filed its report with this court on January 7, 1974.

Many of the delays, especially in the hearing period between January 29, 1965, and March 4, 1971, are explainable by the respondent's action. No less than 37 continuances of the hearings were allowed on the respondent's motion. There were numerous other motions by him. For example, he was granted two extensions of time to file his answer. Also, he filed objections to a motion for issuance of a *subpoena duces tecum,* filed a motion to strike the complaint's [sic] interrogatories and later obtained an extension of time to answer the interrogatories.

No explanation is offered by the *amicus curiae* as to the reasons for the hearing division's not filing its report until June 14, 1973, other than to note that the record contained 2,264 pages.

There is no prejudice to the respondent shown by the record here and there is no charge of specific prejudice made because of delays in the bringing of the proceeding or in the proceeding. As has been stated, the delays in substantial part were caused by the respondent's own action. There is no statute of limitations applicable in a disciplinary proceeding such as this, and we will not refuse to entertain charges simply because of the passage of some period of time. *In re Anderson,* 370 Ill. 515; *People ex rel. Healy* v. *Hooper,* 218 Ill. 313.

Considering all the circumstances, the argument of the respondent that the complaint should be dismissed and he should be discharged because of delays cannot be accepted.

The defendant's conduct as shown by the record here was completely reprehensible. The sanction recommended by the Board of Managers is certainly not excessive, and we adopt it.

Judgment suspending the respondent from the practice of law for three years is entered.

Respondent suspended.

MR. JUSTICE SCHAEFER took no part in the consideration or decision of this case.

MR. JUSTICE KLUCZYNSKI, dissenting:

I cannot agree that the evidence requires the sanction imposed by the majority. The evidence pertaining to the solicitation charges is not clear and convincing.

At the outset it should be noted that not one of respondent's clients expressed dissatisfaction with the services rendered by him, and all apparently admitted going to see him voluntarily. These individuals were ferreted out by a multitude of insurance investigators identifying themselves only as agents of the Chicago Bar Association. The investigation lasted several months.

John Burns, one of the investigators, testified that he worked for the American Insurance Association, which consisted of 200 insurance companies. Exchanges of information were also made with the Allstate and State Farm insurance companies. The investigation was paid for by the insurance association. Each investigator was issued an identification card indicating that the investigation of the closed cases was authorized by the Chicago Bar Association. These credentials were subsequently returned to the supervising agent of the insurance association. As the majority notes, the insurance association report pertaining to respondent was completed in 1961; yet the complaint against him, initially consisting of 16 counts and involving 30 former clients sought out by the insurance investigators, was not filed until 1965. These charges were eventually reduced to seven counts because of evidentiary insufficiency, and the number of clients who testified was similarly lessened.

In regard to the charges of solicitation and procurement, the majority characterizes the incriminating evidence against respondent as mostly circumstantial. Only in two of the five cases in which solicitation was charged was there any attempt to identify the individual as either the respondent (count VII) or respondent's acquaintance (count VIII).

In count VII the client (Frazen) [sic] said she was approached by respondent, yet she gave an inaccurate description of him and admitted her memory was uncertain. In count VIII the client (Nehrke) identified a young college student as the person who recommended respondent, but the party, who was identified, refuted the matter. Nehrke also appears to have identified another person who visited him the evening of the accident, but a stipulation was made that this person was attending an Eastern law school at the time the solicitation purportedly occurred. Nehrke admitted that he knew he would be making a false insurance claim.

The other three charges involve unidentified individuals who approached the clients. Respondent disputed any knowledge of solicitation in these matters. In count X, the client (Frey) said he bribed the investigating police officer in order to avoid being taken to the police station because he did not possess a driver's license at the time of the accident. Frey represented that he signed a retainer agreement given him by the unknown party who came to his house and that he saw this agreement on respondent's desk when he later visited his office. However, Frey said that respondent requested that he sign another retainer agreement.

The evidence related to solicitation lacks the clear and convincing nature necessary to justify the majority's order of suspension. *In re Krasner,* 32 Ill.2d 121, does not persuade. There the evidence showed an identified individual was paid $20,000 for "referring" about 75 personal injury cases to the attorney. The proof in that case of solicitation was far greater than that adduced against respondent.

The charges pertaining to the accounting are also somewhat contradicted. For example, the majority concludes that Lancaster (count I) received only $1,085 in settlement of his claim. *Amicus* suggests that the proper amount would have been $1,491.66. The abstract indicates that Lancaster admitted receiving about $1,500 as a result of the case.

It appears that more accurate accounting methods should have been utilized by respondent, but it should be reiterated that his clients expressed satisfaction with his services. Moreover, even though there may be some confusion as to the actual amounts paid and when payment was made in a limited number of cases, I believe that the confusing circumstances present a mitigating factor in determination of the sanction.

Even if the evidence were to be considered adversely to respondent, prior decisions tend to establish that the majority's sanction is excessive. This court has recognized that a lengthy suspension envisions severe consequences to a lawyer's career. (*In re Donaghy*, 402 Ill. 120, 123-24.) In the previously mentioned case of *In re Krasner* the facts of wrongdoing were far more aggravated than any which might have been demonstrated in the present case. Krasner was suspended for one year. In the case of *In re Damisch*, 38 Ill.2d 195, the misconduct could be described as qualitatively similar to that demonstrated in this case and the respondent was not suspended. Mitigating factors were established in *Damisch* that were akin to those presented on behalf of the 51-year-old respondent in this case. I would therefore favor a reduction of the sanction imposed to one more in keeping with our decisions in *Krasner* and *Damisch*. A reduction would be commensurate with the public's protection and would still maintain the dignity of the legal profession.

Mr. Justice Goldenhersh joins in this dissent.

APPENDIX B

UNITED STATES OF AMERICA

State of Illinois, Supreme Court—ss.

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the twelfth day of May in the year of our Lord, one thousand nine hundred and seventy-five, within and for the State of Illinois.

Present: Robert C. Underwood, Chief Justice
Justice Walter V. Schaefer
Justice Daniel P. Ward
Justice Joseph H. Goldenhersh
Justice Thomas E. Kluczynski
Justice Charles H. Davis
Justice Howard C. Ryan

William J. Scott, Attorney General
William G. Lyons, Marshal
Attest: Clell L. Woods, Clerk

Be It Remembered, that, to-wit: on the 29th day of May, A.D. 1975, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

In re: No. 46403
Samuel V. Bossov, an Attorney
Information 1356

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.

I, Clell L. Woods, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of Said Court this 15th day of August, A.D. 1975.

/s/ *Clell L. Woods,* Clerk,
Supreme Court of the State of Illinois.

(SEAL)